



2016 CHAPTER 18

PART 6

HIGH COURT POWERS: DECISIONS AND DEPUTIES

*Practice and procedure*

**Rules of court**

**124.**—(1) In this section “proceedings” means proceedings before the court with respect to a person who lacks, or is alleged to lack, capacity (“P”).

(2) Rules of court may make provision as to the conduct of such proceedings including provision—

- (a) as to the carrying out of preliminary or incidental inquiries;
- (b) as to the way and form in which proceedings are to be commenced and carried on;
- (c) as to the persons by whom proceedings may be commenced and carried on;
- (d) as to the persons who are to be entitled to be notified of, to attend, or to take part in proceedings;
- (e) as to the evidence which may be authorised or required to be given in proceedings and the way (whether on oath or otherwise and whether orally or in writing) in which it is to be given;
- (f) as to the administration of oaths and taking of affidavits for the purposes of proceedings;
- (g) for the allocation, in specified circumstances, of any specified description of proceedings to a specified judge or to specified descriptions of judges;

- (h) for the exercise of the jurisdiction of the court, in specified circumstances, by its officers or other staff;
  - (i) for enabling the court to appoint a suitable person (who may, with his or her consent, be the Official Solicitor) to act in the name of, or on behalf of, or to represent P;
  - (j) for enabling an application to the court to be disposed of without a hearing;
  - (k) as to authorising or requiring—
    - (i) the attendance and examination of persons who lack, or are alleged to lack capacity;
    - (ii) the provision of information; and
    - (iii) the production of documents;
  - (l) for enabling the court to proceed with, or with any part of, a hearing in the absence of P;
  - (m) for enabling or requiring the proceedings or any part of them to be conducted in private and for enabling the court to determine who is to be admitted when the court sits in private and to exclude specified persons when it sits in public;
  - (n) as to what may be received as evidence (whether or not admissible apart from the rules) and the way in which it is to be presented;
  - (o) for the enforcement of orders made and directions given in the proceedings;
  - (p) as to—
    - (i) the making of orders for the payment of costs to or by persons attending, as well as persons taking part in, proceedings; and
    - (ii) the way in which and funds out of which any such costs are to be paid;
  - (q) the way in which, and funds from which, fees are to be paid;
  - (r) as to the termination of proceedings, whether on the death or recovery of P or otherwise, and the exercise, pending the termination of the proceedings, of powers exercisable under this Part in relation to P's—
    - (i) care, treatment or personal welfare; or
    - (ii) property or affairs;
  - (s) for charging fees and costs upon P's estate;
  - (t) for the payment of fees and costs within a specified time of P's death or the conclusion of the proceedings.
- (3) Rules of court may also make provision as to appeals from decisions of the court in such proceedings, including provision—
- (a) that where a decision of the court is made by a person exercising the jurisdiction of the court by virtue of rules made under subsection (2)(h),

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*Status: This is the original version (as it was originally enacted).*

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an appeal from that decision lies to a judge of the court of a specified description and not to the Court of Appeal;

- (b) that, in specified cases, an appeal from a decision of the court may not be made without leave;
- (c) as to the person or persons entitled to grant leave to appeal;
- (d) as to any requirements to be met before leave is granted;
- (e) that where a judge of the court makes a decision on an appeal, no appeal may be made to the Court of Appeal from that decision unless the Court of Appeal considers that—
  - (i) the appeal would raise an important point of principle or practice; or
  - (ii) there is some other compelling reason for the Court of Appeal to hear it;
- (f) as to any considerations to be taken into account in relation to granting or refusing leave to appeal.

(4) A charge, created by virtue of subsection (2)(s), upon the estate of a person is not to cause any interest of that person in any property to fail or determine or to be prevented from recommencing.

(5) In this section “specified” means specified by the rules.